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Letter dated 3 April 2018 from the Chargé d'affaires a.i. of the Permanent Mission of the Syrian Arab Republic to the United Nations addressed to the Secretary-General

I am writing to you in the wake of the decision of the President of the General Assembly to convene an informal meeting under the pretext of allowing the Head of the so-called "International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011" to present the first report on the implementation of its "mandate".

In this context, I would like to inform you that the Permanent Representative sent a letter to the President of the General Assembly asking him to take the wise decision not to respond to the request of Qatar and Liechtenstein to hold this informal meeting. However, he decided to convene it without consultation with the Member State concerned. In fact, he went beyond that and chose the date of 17 April 2018, which marks the National Day of the Syrian Arab Republic.

Initially and procedurally, I would like to emphasize that any assessment or legal discussion contained in the present letter does not constitute recognition by the Syrian Arab Republic of the so-called "International, Impartial and Independent Mechanism" or of its existence, or acceptance of any of its acts or presumable mandate.

Objectively, I would like to reiterate the firm position of the Syrian Arab Republic towards the so-called "International, Impartial and Independent Mechanism", expressed and explained in the letter addressed to you from the Chargé d'affaires a.i. of the Permanent Mission of the Syrian Arab Republic (A/71/799). I would also like to refer to the note verbale from the Permanent Mission of the Russian Federation addressed to you (A/71/793). These two communications, along with letters from other Permanent Missions, exposed the serious legal defects that marred the adoption of the non-consensual General Assembly resolution 71/248 and the process of establishing the "International, Impartial and Independent Mechanism", which undoubtedly constituted a serious breach of the Charter of the United Nations and its principles and purposes, including but not limited to:

- General Assembly resolution 71/248 gravely violated Article 12 of the Charter, which reads as follows: "While the Security Council is exercising in respect of

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any dispute or situation the functions assigned to it in the Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests". Needless to say, the Security Council is still fully engaged, in its responsibilities and mandates, in the situation in the Syrian Arab Republic, and, therefore, the General Assembly has no mandate to take any action in this context.

- According to the Charter, it is not within the General Assembly's mandate to establish such mechanisms, since that mandate is entrusted exclusively to the Security Council. Consequently, resolution 71/248 sets an alarming precedent that breaches the Charter as an abnormal practice within the context of the United Nations norms.

- The general principle that leads the United Nations framework in providing technical support to any Member State, including assistance provided through legal mechanisms, is that such support should be provided upon the request of the State concerned, which was not the case with the establishment of the so-called "International, Impartial and Independent Mechanism".

- General Assembly resolution 71/248 and the report of the Secretary-General on the implementation of that resolution (A/71/755) have granted the so-called "International, Impartial and Independent Mechanism" extended illegitimate mandates, which is the prerogative of the national prosecution system in every Member State. In principle, the Charter did not grant the General Assembly any mandate or jurisdiction to pursue either prosecutions or criminal investigations. Upon this legal basis, the General Assembly does not have the authority to create an organ with such a mandate that goes beyond what the General Assembly already has (see Articles 10–12 and 22 of the Charter).

- The serious legal defects in General Assembly resolution 71/248 that led to the establishment of the so-called "International, Impartial and Independent Mechanism" lead to the following conclusions:

  - The so-called "International, Impartial and Independent Mechanism" should not be considered a subsidiary body of the General Assembly, as described in the relevant report of the Secretary-General. Consequently, decisions to appoint a "Head" or "Vice-Head" of the so-called "International, Impartial and Independent Mechanism" are illegitimate;

  - The so-called "International, Impartial and Independent Mechanism" lacks the basis for being a legal entity;

  - The so-called "International, Impartial and Independent Mechanism" has neither the mandate nor the capacity to conclude agreements with Member States or any other entity;

  - The United Nations does not have the legal basis to accept voluntary contributions or to allocate budgetary funds to the so-called "International, Impartial and Independent Mechanism";

  - Any information or data collected and possessed by the so-called "International, Impartial and Independent Mechanism" is not eligible to be used in any future criminal proceedings.

As for the first report of the so-called "International, Impartial and Independent Mechanism" (A/72/764), I would like to call upon you and the representatives of Member States to scrutinize the contents of that report, to discover that its authors are drawn from the same political positions and motivations that led a group of Member States, notably Qatar and Liechtenstein, to desperately seek the establishment of such a mechanism through the non-consensual General Assembly resolution 71/248.

This report is based on the sole purpose of replacing the national legal and judicial institutions with the so-called "International, Impartial and Independent Mechanism", by granting it mandates of investigation, prosecution and the judiciary through the misuse of controversial concepts opposed by most Member States, in particular the scope of jurisdictions. The authors of the report have been so impudent as to include many paragraphs on virtual jurisdictions, so-called "universal jurisdiction" and even an "existing body that acquires jurisdiction over international crimes committed in the Syrian Arab Republic or a new jurisdiction specifically created to deal with such crimes".

The so-called "International, Impartial and Independent Mechanism" not only has desperately attempted to undermine the Syrian justice system by trying to take over the powers of this national system but also has gone beyond trying to mobilize artificial jurisdictions, some of which are ambiguous and controversial and have no legal basis. The authors of the report went further than the illegitimate mandate given to the so-called "International, Impartial and Independent Mechanism" in General Assembly resolution 71/248 by considering it to be a competent entity that has the authority to assess national jurisdictions in Member States, to impose specific criteria, such as the non-application of the death penalty, and to require the Governments of Member States to change national laws and legislation so that the so-called "International, Impartial and Independent Mechanism" agrees to share evidence and materials with them.

This methodology indicates that those who run the so-called "International, Impartial and Independent Mechanism" have chosen a particular model of jurisdiction and decided to impose it on Member States. Moreover, they seek to grant the so-called "International, Impartial and Independent Mechanism" broader mandates that have no basis in the Charter or in international law. In other words, those who manage and operate the so-called "International, Impartial and Independent Mechanism" seek to distort international law and international human rights standards in order to serve merely political objectives. Therefore, selectivity and duplicity have been and will remain permanent defects in the structure of the so-called "International, Impartial and Independent Mechanism".

The approach adopted by those who operate the so-called "International, Impartial and Independent Mechanism" reflects the fact that it lacks the factors of viability and continuity and that it is merely a politicized instrument with no support on any international legal basis. Because of this erroneous approach, the authors of the report fell into the trap of granting the so-called "International, Impartial and Independent Mechanism" a broad mandate without any legal justification.

In conclusion, the real purpose of establishing the so-called "International, Impartial and Independent Mechanism" is to contribute to the process of fabricating and accumulating false accusations against the Syrian Arab Republic and its allies. Needless to say, this process is sponsored and operated by certain Member States that turned to such approaches after the failure of their endeavours to support and invest in terrorist armed groups as political and military tools to destabilize Syria. In this regard, I would like to remind you of the fact that high-ranking officials from Qatar have publicly rejected the designation by the United Nations of "Al-Nusrah Front" as a terrorist entity and admitted the involvement of their Government in supporting, funding and arming "Al-Nusrah Front" and other associated terrorist organizations in Syria.

The Syrian Arab Republic is committed to its right and duty under the Charter of the United Nations to exercise full sovereignty and legal, prosecutorial and judicial authority over any allegations of violations of human rights or international humanitarian law through its national legal institutions and mechanisms. In this

context, the Syrian Arab Republic calls upon the Secretariat, the United Nations organs and Member States to distance themselves from all illegal activities carried out or to be carried out by the so-called "International, Impartial and Independent Mechanism".

The Syrian Arab Republic would like once again to draw your attention and that of representatives of Member States to the fact that the so-called "International, Impartial and Independent Mechanism" sets a serious precedent within the framework of the United Nations. Moreover, its existence will lead to the establishment and consolidation of an illegal status, which could be exploited in the future to violate the national sovereignty and jurisdiction of any Member State.

The highly sensitive role of the United Nations as a mediator in a Syrian-led and -owned political process without any foreign interference requires all United Nations bodies to deal cautiously with any suspicious act that seeks to politicize aspects of the situation in the Syrian Arab Republic or to undermine the potential political solution.

It would be highly appreciated if the present letter could be circulated as a document of the General Assembly, under agenda item 34.

(*Signed*) Mounzer **Mounzer**
Chargé d'affaires a.i.